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# The Boundary Dispute Between Illinois and Wisconsin

BY

WILLIAM RADEBAUGH





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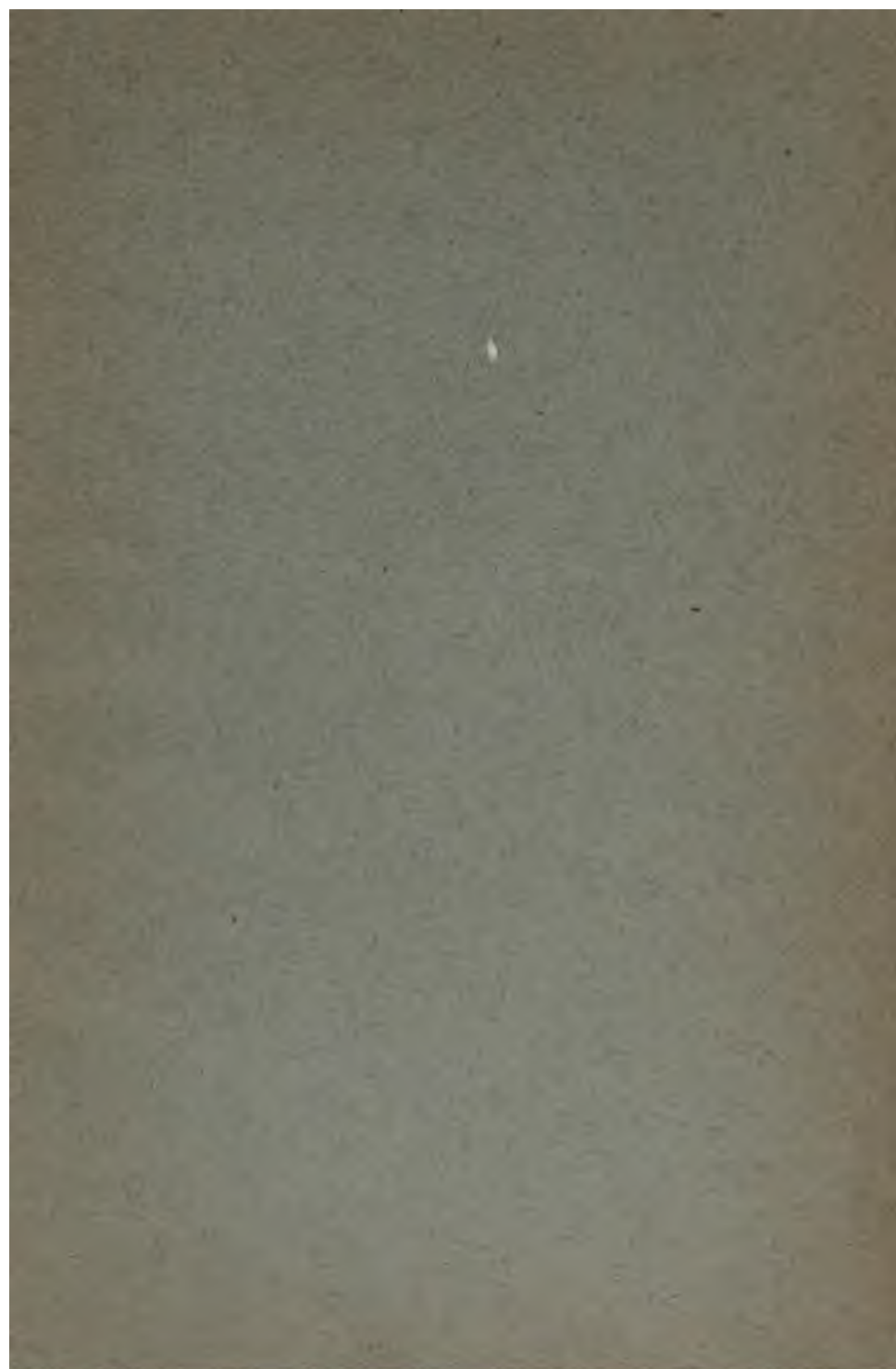




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**THE BOUNDARY DISPUTE BETWEEN  
ILLINOIS AND WISCONSIN.**

**AN ADDRESS READ BEFORE  
THE CHICAGO HISTORICAL SOCIETY**

**AT A SPECIAL MEETING HELD  
MAY 19, 1904.**

**BY**

**WILLIAM RADEBAUGH.**







THE BOUNDARY DISPUTE BETWEEN ILLINOIS  
AND WISCONSIN.

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From the founding of the English colonies in America to the present day the boundary between two or more adjacent colonies or States has been the cause of many disputes, often resulting in much ill feeling on the part of the inhabitants of the interested colonies or States. The most fruitful source for the disputes has been the limited geographical knowledge of the region at the time the boundaries were legally determined. As the country developed it has often happened that the legal boundary or the legal description of the territory was so vague that different interpretations were possible. As different interests became affected by the given boundary, the organized efforts which were so often made to settle the question only served to intensify the dispute. As a result the history of few States can be written without an introductory chapter devoted to the disputed boundaries. In this respect Illinois is no exception, and inasmuch as Chicago is in the territory which once was the source of much contention on the part of the inhabitants of the Wisconsin territory and the people living in the territory under dispute, the chapter on the Illinois-Wisconsin Boundary Dispute may properly be brought before the members of the Chicago Historical Society.

The north boundary of the three Southern States as provided by the ordinance of 1787 gave rise to disputes between Michigan and Indiana and Ohio, and again, between Wisconsin and Illinois. The ground for all these disputes lay in the interpretation of the fifth article of the ordinance of 1787, and of the word "compact" as it appeared in the same ordinance. By the fifth article of this ordinance it was provided "that there should be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same shall become fixed and established as follows: The Western State in the said territory shall be bounded by the Mississippi, the Ohio and

the Wabash Rivers; a direct line drawn from the Wabash and Post Vincennes due north to the territory line between the United States and Canada; and by the said territorial line to the Lake of the Woods and the Mississippi. . . . Provided, however, and it is further understood and declared that the boundaries of these three States shall be subject so far to be altered that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southern end or extreme of Lake Michigan. And whenever any of said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government." In 1788 Virginia consented to the alteration of the act of cession, and declared "that the compact between the original States and the people and States in the territory northwest of the Ohio River be, and the same is hereby ratified and confirmed."<sup>1</sup> So far as Illinois was concerned the question was allowed to remain as thus determined until January 16, 1818, when Mr. Nathaniel Pope, the territorial delegate from Illinois, presented a petition from the territorial assembly praying that the territory of Illinois might be formed into a State government, and that the State when formed might be admitted into the union on an equal footing with the original States. This petition was referred to a committee of which Mr. Pope was made a member. On April 13th the subject was again taken up in the committee of the whole. Here Mr. Pope moved to amend the original bill as to the northern boundary. In place of an east and west line drawn through the southerly bend or extreme of Lake Michigan, it was moved to make it an east and west line on the parallel of 42 degrees and 30 minutes<sup>2</sup>. The original boundary, the southern bend of Lake Michigan is, as was ascertained, 41 degrees, 37 minutes and 7 9-10 seconds, or a difference of 61 miles, 19½ chains. Thus by this amendment some 8,500 square miles were added to Illinois.

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<sup>1</sup>Poore's Charters and Constitutions, p. 432.

<sup>2</sup>Annals of Congress, p. 1677.

Mr. Pope, in support of this amendment, urged that it was highly desirable that Illinois should have a coast line on Lake Michigan. That it would afford additional security to the perpetuity of the union, inasmuch as the State would thereby be connected with the States of Indiana, Ohio, Pennsylvania, and New York, through the lakes. The facility of opening a canal between Lake Michigan and the Illinois River was conceded by everyone who was acquainted with the conditions of the country. By giving the new State the port of Chicago it would tend towards directing the attention to the opening of communication between Chicago and the Illinois River, and it would also cause the improvement of the harbor of Chicago. However, with all of Mr. Pope's eloquence in regard to Chicago, and the desirability of having it within the limits of Illinois, there seemed a lingering doubt in his mind whether Chicago might not be in Indiana and not in Illinois. He was sure, however, of one thing, that he had by fixing the northern boundary taken it from Wisconsin. With the boundaries as thus determined Illinois was admitted into the union, December 3, 1818.

With the settlers, however, about Galena, there soon arose a doubt as to whether they were within Wisconsin or Illinois. On October 27, 1827, nine years after the admission of Illinois as a State, we find Dr. Horatio Newhall, who had recently arrived in Fever River settlement, near Galena, writing to his brother as follows: "It is uncertain whether I am in the *boundary* of Illinois or Michigan, but direct your letters to Fever River, Ill., and they will come safely." It will be recalled that the present State of Wisconsin had formed a part of the territory of Michigan since 1818. October, 1828, a petition was sent to Congress from the people of that part of Illinois lying north of the line established by the ordinance of 1787, and that part of the territory of Michigan west of Lake Michigan, and comprehending the mining district known as the Fever River Lead Mines, praying for the formation of a new territory. It declared that "the people inhabiting the territory northwest of the Ohio had a right to expect that the country lying north of an east and west line passing through the southernmost end of Lake Michigan to the Mississippi River, and between the said lake, the Mississippi and the Canada line would remain together." It further stated that "this was a part of a

compact unchangeably granted by the people of the original States to the people who should inhabit the territory northwest of the Ohio." The petition further stated that "an unrepresented people without their knowledge or consent have been transferred from one sovereignty to another." It further stated that "the division of the miners by an ideal line, separating into different governments individuals materially connected in similar pursuits is embarrassing." Here we have the germs of the controversy which was waged with much persistency and bitterness between the years 1838 and 1848. Here we have the legal objections as well as the economic and social which were later urged with much earnestness. The Miners Journal, of Galena, on October 25, 1828, commented as follows on the petition which had thus been sent to Congress: "We do not fully agree with the memorialists in petitioning Congress to dispose of that tract of country which has once been granted Illinois, but we think that it would be for the interest of the miners to be erected together with the adjoining county above into a separate territory. And we firmly believe, too, that Congress departed from the clear and express terms of their own ordinance passed in the year 1787 when they granted to the State of Illinois nearly a degree and a half of latitude of the chartered limits of this country." It will be recalled that this territory about Galena had been organized as a county of Illinois the year before, and called Jo Daviess, Cook and La Salle not being organized until 1831. The first we hear of the question from the Wisconsin side is a letter to a Galena paper from Judge J. D. Doty. In this letter the judge sets forth at length the claims of Wisconsin to the territory in dispute. From this time until about 1836 very little seems to have been done in regard to the question. From 1833 to 1836 Michigan urged her claims both in Congress and out. At the same time we had what is known as the Toledo War. It will be recalled that the governor of Michigan was so determined to have the territory within the State of Ohio north of the line as described by the ordinance of 1787 that he raised a band of militia and proceeded against the sovereign State of Ohio, but fortunately for all parties the matter was settled in Congress. On March 1, 1836, Congress passed an act by way of a compromise in which it was provided that Ohio should retain the territory within the prescribed boundaries of the act of admission. But to compensate Michigan for the loss which she con-



ceived that she had suffered by the rapacity of Ohio and the willingness of Congress it was provided that Michigan should have a large tract of country west of Lake Michigan, which she had never claimed, lands for the erection of her public buildings, all salt springs in the State with six sections of land contiguous to each, in addition to the school and university lands, and 5 per cent of the net proceeds of the sales of public lands in the State, and also gave to her \$382,335 of the money required by the act of June 23, 1835, to be deposited with the States. Wisconsin interpreted this act as an admission on the part of Congress that the claims of Michigan were just and valid, and that Congress by means of thus compensating Michigan for her loss sought to avert trouble which might grow out of the dispute over the boundary question. In the report of the judiciary committee which had the matter in hand there was a statement somewhat hypothetical in its nature—"If the construction of the ordinance of 1787 contended by Michigan be the true construction Congress had no power thus to extend the boundaries of those States, and while Indiana must now surrender to Michigan a large portion of six counties on her northern boundary, Illinois must hereafter surrender to Wisconsin a tract of country containing her richest mineral region and not surpassed for fertility by any tract of equal extent in the west, embracing the whole tract lying between Lake Michigan and the Mississippi River and within the boundaries under dispute." Congress, however, did not allow this argument, but it served its purpose with Wisconsin. Many of the politicians of Wisconsin, about 1836-7-8, conceived the plan of re-establishing the old boundary as prescribed by the ordinance of 1787 and pushing rapidly from territorial existence into a State. Mr. Doty, afterwards governor of the territory, seemed to have been one of the most persistent leaders of this movement. The movement, for the most part, seems to have had, so far as Wisconsin was concerned, its impulse from the politicians rather than from the desire of the people of that territory. Throughout all this period of dispute and agitation the people of Wisconsin remained indifferent, but the leaders in politics in season and out of season never ceased the agitation for having the territory returned to Wisconsin; usually, however, couching their demands in legal terms based upon the inviolable compact of 1787 and the demands that Wisconsin be erected into a State at once.

On December 22, 1838, the Legislature presented a memorial to Congress with the approval of the governor. On January 28, 1839, the memorial was received in Congress. It was immediately referred to the judiciary committee where it was allowed to slumber. No doubt this action was partly prompted by the fact that the same committee had three years previously thrashed over the same question in regard to a similar dispute between Michigan and Ohio. In this we have the legal statement of the question in so far as Wisconsin was able to state her case. I quote so much as pertains to the controversy in hand. "To the Honorable, the Senate and House of Representatives of the United States of America in Congress assembled. The memorial of the Legislative Assembly of the Territory of Wisconsin respectfully represents: It is believed by your memorialists that all that district of country lying between the northern boundary line of the State of Illinois, and a line drawn west from the southern extreme of Lake Michigan to the Mississippi rightfully belongs to the Territory of Wisconsin. No attempt has hitherto been made on the part of this territory to vindicate her rights to this entire region of country, although guaranteed to her by solemn compact. But the people in view of the importance of the district in question, comprehending more than five thousand square miles inferior to no other district of equal extent in the western country, whether in soil, climate or commercial advantages, already settled by an enterprising and thrifty population, of nearly double the number of the present inhabitants of Wisconsin, no longer deem it proper to be silent on this subject, and do now, through their representatives, respectfully ask leave to present this memorial to your honorable body for consideration.

The title of this territory to the jurisdiction of the district in question rests in sundry acts of Congress and of the commonwealth of Virginia. This State, with certain other, was the original proprietor, and had jurisdiction over the whole country which was afterwards called the 'Territory of the United States northwest of the River Ohio.'

It was early an object with Congress to obtain the cession of this territory to the United States. Accordingly, by an act passed September 13, 1783, that body proposed certain terms and conditions on which such cession would be received. That is to say "upon condition that the territory ceded should be laid out and formed into States con-

taining a suitable extent of territory, each not less than 100, nor more than 150 miles square, or as near that as circumstances would permit. This whole country was afterwards ceded to the United States upon these terms, and it must be beyond debate or doubt, that upon principles of law no less than equity and justice, Congress was bound by the conditions of the contracts introduced into it first by themselves. These memorialists are gratified to find that in no instance has this obligation been denied by that body. It may be safely asserted that in every act relating to the Territory thus ceded to the United States, where the point was drawn in question from the day it was ceded to the present time, Congress have explicitly recognized the force of their own agreements. This will appear to be established by a brief survey of the history of the legislation of Congress on the subject." To the student of history this must appear as one of the little exaggerations which politicians are allowed when urging their claims. Congress had very explicitly affirmed in her acts in regard to Ohio that she did not conceive the line as determined by the ordinance of 1787 as at all binding upon her acts. But to the mind of the Wisconsin Legislature, which no doubt had failed to grasp the situation, all the arguments of Congress were as non existent. But to continue the memorial "The stipulations of the act of 1783 above cited were changed by the ordinance of July 13, 1787, entitled 'An ordinance for the government of the northwest territory.' This contains several articles entitled 'Articles of compact between the original States and the people and States within said Territory,' and it is declared in said ordinance, that these articles shall forever remain unalterable unless by common consent. In the fifth article the Territory is divided into States, and, after the boundary of three States extending from the River Ohio on the south, to Canada on the north, were prescribed, it proceeded as follows, viz.: Provided, however, and it is further understood and declared that the boundaries of these three States shall be subject so far to be altered that if Congress shall hereafter think it expedient they shall have authority to form one or two States in that part of said Territory which lies north of an east and west line drawn through the southern extreme of Lake Michigan. To this article was prefixed the conditions 'As soon as Virginia shall alter her deed of cession and consent to the same,' clearly acknowledging the binding force of the first com-



pact now attempted to be changed and that it could not be done without the consent of the parties to it.

In December, 1788, Virginia made the alteration in her act of cession and thus came into this second agreement with Congress which is the present subsisting compact. . . . The last act to be noted in this review is that to enable the people of Illinois to form a constitution in order for admission into the union dated April 18, 1818, and is the act whose validity is called in question by your memorialists. This act comes directly in collision with, and is repugnant to, the compact entered into by the original States with the people and States within this Northwestern Territory. The attempt to comply with the compact by introducing the proviso, which is in the words just quoted from the Indiana act, is a vain one. It is admitted that the convention provided for in the act, did ratify the present boundaries of the State of Illinois. But does it remove the objection that the compact is violated? This is the great question, and the only one in debate, because it is conceded that this compact is the law binding all parties irrepealable except by the consent of all parties. It will be contended on the part of Illinois that Congress and the people of that State were the only parties whose consent was requisite to give validity to the act of 1818 according to the compact. But it is insisted that neither the letter nor spirit of this instrument will admit of this construction. Who are the parties named in the compact? A compact between whom does it say? The original State and the people and the States within said Territory. Ohio and Indiana were States within the Territory. Michigan was erected into a territory and another party was the whole people of said Territory. Neither of these had given their consent. It is agreed that the said States and Territory of Michigan represented in Congress when the act was passed, did thereby give their consent. In reply the decision of Congress upon a question not distinguishable from this may be cited. The separate consent of the State Legislature of Virginia to certain provisions of the ordinance of July 13, 1787, which conflicted with the compact, was, by Congress deemed necessary, although she was in like manner present by her representatives at the enacting of the ordinance. The act excludes all people of the Territory who lived out of the prescribed boundary lines of the State, and they have given no consent. True, the number might have been small; but does that take away

their political rights? If there were any, they were parties to the compact, and where is the evidence that there was none. Virginia intended to provide by the compact for all her citizens. Suppose the formation of a State government for Illinois had been postponed to the present time, could her present boundaries be legally established without the consent of the people north of the State, and how are the rights of the present population better or different from those of the inhabitants of the same country in 1818? Suppose again a law to have been passed by Congress placing the boundary of the State so far north as the River Wisconsin, have Ohio, Indiana and Michigan, and the exposed handful of citizens no interest in the matter, and can they have no voice in a subject so deeply affecting their welfare? No, the spirit of the compact as well as its letter, and most obvious meaning, will bear no such construction, and if it can be set aside by any one of the parties at pleasure, its spirit has fled—it is a dead letter. The important provisions of the compact next following this clause have been violated, the right of admission into the union when the State shall have a certain number of inhabitants may be taken away next, and what can secure the right to the writ of habeas corpus, and a trial by jury to this remnant of people?

Nay, what can prevent the last vestige of the compact from being erased from the statute book if the power here assumed legally belongs to one of the parties without the consent of the other. Your memorialists are willing to leave the subject here, fully convinced it was an erroneous construction of the compact which led to the opinion that it could be altered by the parties called upon to consent, in the case now before them, without the consent of all the other parties to it, and that the boundaries of the State of Illinois should remain as prescribed in the ordinance for the government of the Territory northwest of the Ohio and would therefore pray that the southern boundary of the Territory may be so far altered as to include all the country lying north of a line drawn due west of the southern extreme of Lake Michigan.

(Signed) J. W. Blockstand,  
Speaker of the House of Representatives.  
Wm. Bullen,  
President of Council.

Approved December 22, 1838.

Henry Dodge, Governor.<sup>1</sup>

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<sup>1</sup>Senate Document, 1839, No. 149.



If Congress was disposed to bury the petitions and requests of the Territorial Legislature of Wisconsin in the recesses of the judiciary committee the political leaders of the Territory and the people residing within the disputed region were not so inclined. The subject was agitated during the summer and fall within the disputed Territory and discussed with considerable vigor among the politicians of Wisconsin Territory. Their stake in the game was early statehood for Wisconsin, while that of the people living within the disputed Territory was a divorce from their uncongenial companions living in the southern part of the State and who for the most part controlled the action of the Illinois Legislature. There was also at this time beginning to appear upon the financial horizon a debt which seemed to threaten, if not to engulf the financial credit of the State. Accordingly when the Territorial Legislature met in December, Governor Dodge, of Wisconsin Territory, urged that the question of the southern boundary be taken into consideration. Accordingly, the recommendation was taken under advisement by separate committees from each branch of the Legislature, and after much discussion and many proposals a joint resolution was passed December 31, 1839, and approved January 13, 1840. It recited the reasons for the action of the people of Wisconsin and suggested certain remedies for the existing conditions. The preamble recited that the southern boundary of the Territory, and of the State to be formed therein, is fixed and established by the ordinance of July 13, 1787, on a line running due west from the southern bend or extreme of Lake Michigan to the Mississippi River. And, although the ordinance is declared to be forever unalterable unless by common consent, a large and valuable tract of country is now held by the State of Illinois and contrary to the manifest right and consent of the people of this Territory. And, it is inexpedient for the people of this Territory to form a constitution and State government, or to ask admission into the union as an independent State, until the southern boundary to which they are so justly entitled by said ordinance shall be fully recognized by the parties of the original compact, therefore—

“Resolved, That the inhabitants of this Territory qualified to vote for delegate in Congress, be requested at the next general election, to be held on the fourth Monday of September next, to vote for or against the formation of a

State government, including all that district of country north of a line running due west from the most southerly bend or extreme of Lake Michigan to the Mississippi River, over which the State of Illinois exercises jurisdiction, and if a majority of the electors vote in favor of said measure, the governor is hereby authorized to issue his proclamation requesting the electors aforesaid to meet in their respective precincts on such a day as he may appoint and choose delegates from their respective districts equal to the number of representatives in both branches of the Legislative Assembly, to assemble in the capitol in Madison on the third Monday in November *for the purpose of deliberating upon and adopting such lawful and constitutional measures as may seem to be necessary and proper for the early adjustment of the southern boundary and admission into the union of a State of Wisconsin on an equal footing with the original States in all respects whatever.*

“Resolved further, That the inhabitants of the district of country now claimed by Illinois lying north of the line running due west from the southern extreme of Lake Michigan to the Mississippi River be and are hereby invited to furnish the executive of this Territory as early as may be convenient, and in such a manner as they may deem proper, an expression of their sentiments in relation to the formation of a State government as contemplated by the foregoing resolutions, and in the event of an election being ordered by the proclamation of the governor, for the election of delegates to a convention as above provided for, to choose delegates to the convention aforesaid, proportionate to the ratio of representation in the Legislative Assembly of this Territory, to act on the business of said convention on an equal footing with the other delegates.”

The question was finally submitted to the people of the Territory concerning the formation of a State government and while the vote was very light, yet so many as took the trouble to vote upon the question voted almost unanimously against it. On April 24th a meeting was held at Green Bay in which a series of resolutions were passed condemning the action of the Legislature, and finally ended by asking that it rescind its action in regard to the formation of a State government. The opposition as expressed in these resolutions was not intended so much as a rebuff to people of Illinois within the disputed Territory as to express their



attitude in regard to the premature formation of a State government."<sup>1</sup>

If from this apathetic condition found in the Territory of Wisconsin, we turn to the actions of the people living within the disputed territory we find an altogether different condition existing. Meetings were at once called during the early part of February in the counties of Jo Daviess, Stephenson, Boone, Carroll, Ogle, Whiteside, Winnebago, Rock Island and McHenry. Delegates were appointed to a general meeting to be held at Rockford July 6th, empowered to take such action as the sense of the meeting might deem proper. Resolutions were drawn up reciting the reasons for this action with the usual preliminary statement that the ordinance of 1787 had been violated and that while they were loyal citizens of Illinois yet they maintained that action should be taken as soon as possible to place them where they legally and rightfully belonged. In most of these resolutions action was taken to provide for delegates to the constitutional convention should it be the wish of the people of the Wisconsin Territory.

Galena and Rockford seemed to have been the centers of this movement. A number of meetings were held in the spring of 1840 at Galena<sup>2</sup>. The whole question was gone over in a most thoroughgoing manner. The entire history of the controversy was set forth in an extended report which was forwarded to Congress. In its resolution this meeting asserted that from authentic information in its possession it is known to be the general, if not the universal, feeling of the inhabitants of this tract of country in dispute that the same of right and by law belong to and is a part of the Territory of Wisconsin. Steps were taken to provide for an election of delegates to the constitution convention which it was hoped might be called by the governor of Wisconsin. It went so far as to declare the number of delegates for every hundred voters. It also appointed a committee of seven to address circular letters and to carry on such correspondence as might be necessary to carry on the work. Money was voted to defray the necessary expenses. Delegates were appointed to attend the meeting at Rockford July 6, 1840. In this connection it might be well to inquire what Chicago was doing in regard to the matter. In the

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<sup>1</sup>M. M. Strong History of the Territory of Wisconsin, p. 312.

<sup>2</sup>Galena Gazette, March 13, 1840.

Chicago American of Tuesday, June 24, 1840, we find the following notice: "The citizens of Cook County are requested to meet at the New York House on Friday evening the 26th of June, instant, at half past seven p. m., for the purpose of choosing delegates to a convention to be held at Rockford, on Monday, the 6th day of July next, to take into consideration the expedience of sending delegates to the Wisconsin convention to be held at Madison in November next, pursuant to the recommendation of the legislative council. All citizens who are in favor of the claims of Wisconsin to that portion of the state of Illinois lying north of a line drawn due east and west through the southern end of Lake Michigan are earnestly requested to attend.  
(Signed) Many Citizens."

However, we look in vain through the daily papers on Friday and Saturday following this call for the proceedings of this meeting. In its place we find extended accounts concerning the proposed Michigan-Illinois Canal. Inasmuch as no delegates attended from Cook County at the Rockford meeting in July it is fair to assume that the meeting after discussing the subject deemed it inadvisable to take any active steps in regard to the matter.

The meeting which had been appointed for Rockford, convened July 6, 1840. The purpose as set forth was to call a meeting of delegates of the northern part of Illinois to deliberate upon the advisability of such measures as might be deemed necessary to carry into effect the ordinance respecting the northern boundary line of Illinois. Nine counties were represented in this convention<sup>1</sup>. On the first day two committees were appointed, one on resolutions and the other to prepare an address to the people within the territory. In all there were 120 delegates in this meeting, the leaders of whom seem to have been Dr. J. C. Goodhue, of Winnebago; C. S. Hempstead, of Jo Daviess; D. H. Whitney, of Boone; E. D. Burke, of McHenry, and Dr. Burr, of Whiteside. Dr. Goodhue was chosen permanent chairman of the convention. Three vice presidents and two secretaries were appointed. On the second day the committee on resolutions reported a series of resolves prefaced by a preamble all of which was unanimously adopted. In the preamble it was declared to be the general if not the universal belief of the inhabitants of the tract in dispute,

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<sup>1</sup>Rock River Express, July 9, 1840.

that the same of right and by law belonged to the Territory of Wisconsin, and that the inhabitants of this tract would find their interests much advanced by the restoration of the original land. The resolution first declared that it was the opinion of the meeting that the original intention of the framers of the fifth article of the ordinance of 1787 had been disregarded, and that Congress by so doing had grossly violated the provisions of the fifth article. It was further resolved that Wisconsin should be admitted into the union as the fifth State provided for in the ordinance of 1787, and it was further resolved that if the governor of Wisconsin shall issue a proclamation for the election of delegates to the convention for the formation of a State government under the resolutions relating to the southern boundary and admission of Wisconsin into the union as a State, approved January 13, 1840, the citizens residing in the district of country mentioned in the third resolution be recommended to elect delegates to the said convention. Copies of the proceedings of the meeting were to be published in all the newspapers within the disputed territory. A central committee of five was appointed with powers to appoint subcommittees and carry on such measures as would most effectively aid in bringing about the return of the people to Wisconsin. As has been observed, however, the people within the Territory of Wisconsin voted against calling such a convention and so for the time no further steps were taken in regard to the question. During the winter of 1840 and 1841 the Wisconsin Legislature seemed to have been satisfied with the result of the election held in August, as no action concerning the question was taken during the meeting of the Territorial Legislature. In October, 1841, Judge J. D. Doty became governor, and now as governor he bent all his energies to bring about the restoration of the southern boundary of Wisconsin as originally provided. Of all the Wisconsin people probably no one equalled Governor Doty in his zeal, earnestness and undying devotion to the one purpose of restoring Wisconsin to her original boundaries. On December 10, 1841, in his annual message to the Legislature he set forth in a very vigorous manner the rights of Wisconsin to the territory to the south of her, that some 8,500 square miles had been wrongfully taken from the Territory of Wisconsin and that the same should be restored. Separate committees in each house were appointed to take under advisement so much of the governor's message as



related to the southern boundary. In the council the committee reported on February 8, 1842<sup>1</sup>. In its report the committee set forth the fact that while there was no question as to the right of Wisconsin in the matter, yet the question of expediency should be considered. Mr. D. A. J. Upham, a member of the committee from Milwaukee, however, broke forth in fiery eloquence which might have done credit to a pupil of Patrick Henry. "Let us maintain that right at all hazards—unite in convention, form a State constitution, extend our jurisdiction over the disputed tract if desired by the inhabitants there, and then with legal right, immutable justice on our side, the moral and physical forces of Illinois, of the whole union, cannot make us retrace our steps." In the house a report was brought in on January 11th. The report was very pronounced in opposition to the forming of a State government, and also to the boundary dispute. It was argued that the time had not arrived when it was expedient or necessary to change the form of government of the Territory, as it was well suited to the needs of the people at the present time. So far as the annexation of that part of the State of Illinois under dispute was concerned it was believed that the question ought not be left entirely to the people within the territory, but that the people within the conceded Territory of Wisconsin should have some right in settling the question. As a still stronger hint to the people of Illinois that they were not specially desired by the people of Wisconsin it was set forth that such annexation ought never to be made until the tract is discharged from the share of public debt as a part of the State of Illinois, nor until the population of Wisconsin shall be equal to that of said tract. It was plainly proposed by the House of Representatives that the people of Northern Illinois should not be allowed to come into the new State ready to seize all the "loaves and fishes" in the way of political offices, nor were they to be allowed an easy escape from their just obligations. Neither in the council nor in the House of Representatives had any action been taken in regard to that part of the governor's message concerning the advisability of submitting the question of the formation of a State government to the voters of the Territory.

The people of Illinois, however, living within this territory seemed to have felt assured that such action would be

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<sup>1</sup>M. M. Strong History of the Territory of Wisconsin, p. 361.

taken, for, by the middle of January we find that meetings had been called, resolutions had been passed, and provisions had been made for the submission of the question to the voters in the near future. On January 22d a meeting of the people of Ogle County was held at Oregon, a series of resolutions were drawn up and unanimously adopted, a committee of nine was appointed to confer with Governor Doty as to the proper action in regard to the question. On February 26th, a meeting was held at the same place to which the committee of nine that had been appointed to confer with Governor Doty reported. They were given assurance that they would have the full support of the governor and the Legislature of Wisconsin in all matters which should look to the promotion of the restoration of the original boundary. As a partial reply to the resolution of the House of Representatives it was resolved that it was no intention of the people of that county to absolve themselves from any of the pecuniary responsibility created by the Legislature of Illinois, and that they held sacred the legal obligations of the State. Similar meetings were held at Freeport and at Galena. In all the usual recital of their grievances and the adoption of such measures as they deemed might relieve them of their troubles.

In several of the counties the question of uniting with Wisconsin was submitted to the voters, and when submitted the question was carried almost unanimously. In Stephenson County the election was held March 5, 1842. A total of 571 votes was polled, of which 570 were for and one against. In the following August, in the same county, at the gubernatorial election in which Mr. Duncan and Judge Ford were candidates, but 564 votes were polled or seven less than in March. In Boone County, at the regular election for governor, in August, 506 votes were polled, of which 495 voted in favor, and 11 against the proposition of uniting Wisconsin. At the same election in Winnebago County, there were 1,002 votes cast for governor and on the proposition to unite with Wisconsin 971 voted in favor, with 6 against. The result seemed to have been about the same in the other counties in which the question was submitted to the people. Desiring to leave nothing undone that might be done to bring to pass the restoration of the people of Northern Illinois to the jurisdiction of the Territory of Wisconsin the inhabitants of these northern counties in addition to passing resolutions and holding elections concerning the question,



sent petitions to Congress requesting that body to repeal so much of the act for the admission of Illinois as conflicts with the ordinance of 1787, and to restore to the inhabitants resident upon the tract of country north of the said line and now within the jurisdiction of Illinois.

On June 28th Governor Doty addressed an official letter to Governor Carlin, of Illinois, in which he protested against the action of the authorities of the State in selecting the public lands within the country claimed by Wisconsin, giving as his reason that many of the inhabitants of that territory had written him to protest against such action. He further urged that there were now 60,000 free inhabitants within the territory west of Lake Michigan and north of the boundary line as described by the ordinance of 1787, and that soon this Territory would apply for statehood and it was highly desirable that too much land within this Territory should not be owned by people living within Illinois. In the course of this letter Governor Doty took occasion to discuss at some length whether the right inhered in a State to organize its State government regardless of the will of Congress. The conclusion reached was that such was its legal right. As a justification of his conclusion and as a precedent the governor cited the action of Tennessee and of Michigan as instance of the power to exercise this right. Governor Carlin appears not to have taken any official action in regard to the receipt of this letter. In his message to the Legislature the subject of the northern boundary dispute finds no place, but much is said about the pressing demands in order to meet the financial obligations which have been entered into during the past four or five years.

Encouraged by the enthusiastic reception given his message to the Legislature on the part of the people of Illinois as expressed by the votes taken on the subject, Governor Doty on the 13th of August issued and had extensively published a proclamation under the great seal of the Territory in which he set forth the injury which had been done the people of the Territory of Wisconsin in changing its boundary and at the same time recommended to the free inhabitants within the Territory that they do each, on the fourth Monday of September, vote yea or nay as the vote may be for or against the formation of a permanent government for the State of Wisconsin. The necessary provisions were made in the proclamation for the returns and can-

vassing the vote. In response to this proclamation but nine of the twenty counties then organized deemed it worth the while to pay any heed to the proclamation. In the nine the total vote was 2,462 of which 619 voted in favor and 1,843 against the formation of a State government. Thus the proposition received scarcely one-fourth of the total vote cast.

The year 1843 opened with a struggle between governor and the assembly. The governor at first refused to meet the assembly, but finally terms of peace were reached. On March 6th the assembly convened for a second time. In his message, among other matters, the governor recommended the submission to the people the question of the adoption of a State government and that a law should be passed authorizing a vote to be taken annually upon the question. The recommendation met with little favor both in the council and the House of Representatives. The governor nothing daunted at such treatment, however, on August 23d issued a second proclamation requesting in a similar manner as in the proclamation of the previous year that a vote be taken upon the question of forming a permanent State government on the day of the next general election. The proclamation of the governor called forth less response than the one of the preceding year. But only five of the counties which made returns the year before now made any returns. The total vote was but 1,817, although the total vote for delegates at this same election was more than 8,000. The votes in favor were 541 to 1,276 against it. The governor, however, was not to be cast down by such defeats. In his annual message to the Legislature on December 4th of the same year he devoted practically five-sixths of it to a discussion of the advisability of Wisconsin forming a State government and the settlement of the boundary question. In accordance with the recommendation of the governor an act was passed to submit the question of forming a State government to a vote of the people. Accordingly, the question backed with the approval of both the governor and Legislature was submitted to the people of the Territory. The vote stood 1,503 for and 5,343 against the advisability of forming a State government.

The part of the governor's message in regard to the boundaries was referred to a special committee in both the council and the House of Representatives. In the house no action was taken. In the council, however, the com-



mittee took the subject under advisement and on Monday, December 18, 1843, the committee of which Mr. Moses M. Strong was chairman brought in an extended report in which the entire history of the question was once more gone over, and the memorial to accompany this was prepared to be transmitted to Congress. This is possibly the most warlike in tone of any of the official pronouncements in connection with this dispute<sup>1</sup>. It affirms that "it has been ascertained that there are now within the present boundaries of Wisconsin more than 60,000 inhabitants and as many more between our southern territorial boundary and an east and west line drawn through the southern extreme of Lake Michigan, and it is the opinion of many that we ought, without further delay form a constitution and State government, adopting that line as our southern boundary, and extend our State jurisdiction over all the country embraced within the boundary prescribed for the fifth State on the northwest territory. In addressing plainly and candidly the Congress of the United States, the representatives of the people of Wisconsin regret the necessity which has been imposed upon them by the unauthorized action of the general government. In consideration of these repeated assaults upon our right of boundary by that government which should have been our guardian, and the protector of our rights while in our infancy and while we had no one to defend our interests, we have entertained a most serious doubt as to what course to pursue in relation thereto. Should Congress, however, turn a deaf ear to our claims upon their justice, or refuse to atone for the wrongs they have done us, we ask them before doing so to reflect upon what they may reasonably imagine will be the consequences and to know as they well may, that Wisconsin will never peaceably submit to so gross a violation of her rights, and that after she has done all to obtain a peaceable redress of her wrongs which reason demands, and shall have failed, she will resort to every other measure in her power to protect and to preserve her rights, and that she will never lose sight of the principle that whatever be the sacrifice, the integrity of her boundary must be preserved. The representatives of the people of Wisconsin, assembled in their legislative capacities, now call upon the Congress of the United States to take this subject under their candid and deliberate consideration, and to do justice while it is not too late to a people

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<sup>1</sup>Journal of the Council, 1843-4. Appendix D.



who have hitherto been weak and unprotected, but who are rapidly rising to giant greatness, and who at no distant day will show to the world that they lack neither the disposition nor the ability to protect themselves." To the students of American political history this declaration will suggest to him some of the resolves and ordinances of South Carolina. In short, we have here a very good exemplification and expression of the doctrine of State rights. However, it is but another illustration of the old saying that people under similar circumstances will behave in a similar manner. This, of course, does not raise the more fundamental question whether individuals have power to control circumstances; and if so, how far. So far as official action is concerned this seems to have been the last in regard to the subject by the Territorial Legislature. Governor Doty in his next message recites that from the well known result of the last election it would be inadvisable to pursue further, for the present, the question of statehood. In the constitutional convention of Wisconsin in 1846 the boundary question excited little interest.

By the enabling act for Wisconsin of August 6, 1846, it seems that Congress meant to put an end to the question of disputed boundaries for Wisconsin. However, in the constitutional convention of 1848 a question was brought forward by a motion of Mr. King, which was to the effect that the admission of a State into the union according to the boundaries described in the act of Congress, should in no way affect or prejudice the right of the State as fixed originally. After a spirited debate on the question, and after some of the strongest advocates of statehood had urged its defeat on the ground that it might endanger the acceptance of the constitution by Congress the question was rejected. Wisconsin had now reached a point in population where it no longer stood in need of numbers to entitle her to a State government. By a census taken to determine the population in 1847 the returns showed 210,546. With this condition the impulse which called forth many of the actions in the early forties no longer existed. With the great body of the people who had no particular interest in politics they seemed to have little or no concern in regard to the people living within this Territory, and consequently took very little or no interest in the struggle. Consequently when the population had reached a sufficient number to enable the Territory to form a State government and thus to realize

the hope and ambition of many of the politicians and the desire of the corporate interests, they, too, no longer felt the same interest in the controversy.

In an official capacity the final word in favor of the claims of Wisconsin to the Territory seems to have been spoken by Mr. Wilson, of New Hampshire, in the House of Representatives during the discussion on the admission of Wisconsin, which was to the effect that while he recognized the justice of the claims of Wisconsin yet the facts must be accepted and the State admitted with the boundaries as defined by Congress.

In the course of this narrative no doubt some such questions as the following must have arisen. Why did the people of Illinois take such vital interest in the question; why did the people of Wisconsin seem so apathetic in regard to the question? Why did the question at issue seem to lose its force in Illinois and why in Wisconsin? And as a final query, how explain the attitude of Congress towards the numerous memorials and petitions?

To answer the question, what prompted the resolves, the petitions and the votes taken by the people now residing in the fourteen northern counties of Illinois, we must go behind the formal declarations as have been set forth. In the first place it would be well to remember that Illinois was first settled in the southern part by people from Kentucky, Tennessee and Virginia. With them they brought their institutions, habits of thinking, and manners and modes of living. On the other hand, if we look into the annals of the several county histories of Northern Illinois we shall find that the early settlers of this section who came along about 1830 to 1840 were for the most part from New England and New York. They, too, brought with them their habits of thinking, modes of living, and general outlook upon the world. Now that these two peoples were asked to live together under the same government, and especially that one body far out numbers the other we may expect to find more or less difference of opinion and divergence of interests. And, when an opportunity of escape is given it is quite natural for the weaker party to seek to get away. In stating the causes why men act so and so I am conscious that for the most part it is difficult to disentangle the complexity of motives which enter into and determine their actions. But from the letters which appeared in the papers at the time, from the editorial comments, and from the pub-

lic utterances of men interested in the question, it would appear that the heavy State debt, the difference in the people of the North and of the South, the ambitions of some of the people of Jo Daviess County to secure possibly the new capital of the new Territory were the leading motives. On the other hand, I think it unfair to say that politics entered into the question very considerably. In the August election of 1842 the counties in which the question was submitted to a vote show that the vote was pretty equally divided between ex-Governor Duncan and Judge Ford, who were candidates for governor. While the vote for annexation was almost unanimous in favor of it. In the closing of an editorial of the Chicago American, February 13, 1840, we find, "From the course which the southern part of the State appears in favor of taking in relation to our canal, which is decidedly and confessedly a national work, the prejudices which they appear to entertain against our *Northern Yankies*, the evident difference of character and association between the people of the North and South, and the difficulty of having our local interest sustained in the Legislature, much might be said in favor of the expediency of going under the new laws and Legislature of the State of Wisconsin." On March 7, 1840, in the same paper there appeared a two-column article discussing the merits of the Wisconsin claim. It concluded as follows: "There is so little sympathy between the people of this region and those of the southern and middle portion of the State, that I apprehend they will mutually shake hands and part without much *grief* on either side." March 25th a letter appears in the same paper, from Pecatonica, in which is set forth the great natural advantages enjoyed by that section of the State. "We are interested in the pending controversy . . . we are northerners, or to speak more to the purpose—Yankees. Three-fourths of the inhabitants of Illinois proper are a totally different sort of people. They have the numerical and political superiority. The most unreasonable and illgrounded prejudices against us exists among them. We are powerless and our voice is if not unheard certainly unheard in the legislative councils of the State. Whether designedly or not almost every legislative enactment is directly adverse to our interests, our views and our feelings. We are taxed to pay the ruinous debts contracted by Illinois for the purpose of carrying on a most gigantic system of internal improvement, conceived in folly and brought forth



in iniquity; commenced only to be abandoned; four-fifths of it is of no use to the State at large, or any portion of her people even if perfected, and every part of it useless and worse than useless to us. We are firmly convinced that we are justly a part of Wisconsin by an organic law older than our revered federal constitution, and in this particular case of paramount authority and by the unerring decree of nature herself. We feel that there are ties binding us firmer to our Wisconsin brother than any which demand our allegiance to our neighbors to the south." The people through their convention at Oregon on January 22, 1842, probably came as near giving expression to the real cause of their action when they said that the lines as originally established by Congress are better suited to the geographical interests of the people of this Territory than any other which may be made. In support of the contention that the debt was a real burden to the people one can find plenty of evidence in the annual messages of the governors to the Legislature. In 1839, three years after the State had embarked upon the scheme of internal improvement the debt had risen to \$11,107,919. And improvements which called for enough to make the total obligation \$13,096,445. In an address to the Legislature December 8, 1842, Governor Ford set forth the fact that the total interests and necessary expenses of the government would require that \$1,528,828 be raised. The taxable property, by the return of 1841 was \$69,831,419. He stated further that the inhabitants were scarcely able to meet a tax of thirty cents on the hundred in addition to their county taxes. In order to raise the amount required it would demand a tax of almost \$2.50 on the hundred. The amount of good money in the State at the time was not more than double the amount to be raised by taxation for a single year, and at least one-half of the money was confined to the banks, in other words, out of circulation. To pay the taxes required it would practically demand all the money in circulation in the State. In 1841 there were 123,500 males over 15 years of age. Of these probably 85,000 were able bodied. The total debt in 1842 had risen to about \$15,000,000, or \$175 for every able bodied male citizen in the State. In commenting on the situation the governor says the popular vote at the last election shows that our population has increased very little since 1840, and it is a fact too notorious to be concealed that nothing but the utter impossibility of selling real estate prevents the rapid de-



crease of our numbers. The adjacent territories are filling up at our expense. The high and palmy days are departed. With such a confession as this from the chief executive of the State should one be surprised to find the people who had no interest in the ends for which this debt had been contracted seeking a way out of it, especially when a legal provision seemed to have been made. Now, if we turn and ask the question why the movement failed we find two or three reasons suggested. About 1844 the Legislature of Illinois began to manifest a kindlier disposition towards the people of the Rock River Valley. Steps were taken looking towards the improvement of the Rock River. A railroad was projected from Chicago to Galena. This was afterwards completed and now forms a part of the Northwestern system. Chicago, indifferent if not apathetic from the beginning towards the movement, had by 1843 and 1844 began actively to oppose it, as she now began to see more clearly her commercial interests through the Illinois-Michigan Canal. But probably the most uncompromising foe in the way of positive advance was Governor Ford. He was a resident of this Territory and probably understood the situation quite as fully as anyone. In his gubernatorial canvass of the State in 1842 he took occasion in a number of his address to declare himself as unalterably opposed to any change in regard to the boundary. We glean somewhat the general attitude of Judge Ford, afterwards governor, in regard to the question in a letter from Rockford, July 10, 1842, in which it was stated that the writer had noticed several articles in the Democratic papers tending to show that the citizens of Rock River country are so very partial to Judge Ford personally that they will vote for him on these grounds. The writer continues: "I think we shall look somewhat to the principles of the man whom we vote for as governor, and if we must have a man who is opposed to the union of this section to Wisconsin we shall not choose Judge Ford, for the simple reason that he being a citizen of the district itself will have a powerful influence in defeating the exertions of our people in accomplishing that object. We expect the south will oppose us as a matter of course, but that opposition will be doubly potent in the hands of our executive from the disputed tract itself as he can speak as a citizen and as the executive of the State. If Judge Ford is elected I bid farewell to all hopes of sustaining our rights, and I think the people of Winnebago are

alive to this fact." With a man as the executive of the State holding such pronounced views on the subject, one would not expect the project to make much headway. Governor Ford writing about this time sums up the legal phase of the question as follows: "There is nothing in the ordinance requiring such additional State or States to be formed of the Territory north of that line; another State might be formed *in* that district of country but not *of it*; it need not necessarily include the whole. By extending the limits of Illinois north of the disputed line, Congress still had the power to make a new State in that district north of it, not including the portion given to Illinois.

In stating the political and the economic reasons for his action Governor Ford, speaking through Nathaniel Pope, says: "It was known that in all confederated republics there was danger of dissolution. The great valley of the Mississippi was filling up with a numerous people; the original confederacy had already advanced westward a thousand miles, across the chain of mountains skirting the Atlantic; the adjoining States in the western country were watered by rivers running from every point of the compass, converging to a focus at the confluence of the Ohio and Mississippi at Cairo; the waters of the Ohio, Cumberland and Tennessee Rivers carried much of the commerce of Alabama and Tennessee, all of Kentucky, considerable portions of that of Virginia, Pennsylvania and New York, and the great portion of the commerce of Ohio and Indiana, down by the point of Cairo (situate in the extreme south of Illinois), where it would be met by the commerce to and from the lower Mississippi with all the States and Territories to be formed in the immense country on the Missouri, and extending to the head waters of the Mississippi. Illinois had a coast of 150 miles on the Ohio River, and nearly as much on the Wabash; the Mississippi was its western boundary for the whole length of the State; the commerce of all the western country was to pass by its shores, and would necessarily come to a focus at the mouth of the Ohio, at a point within this State, and within the control of Illinois, if the union being dissolved, she should see proper to control it. It was foreseen that none of the great States in the West could venture to aid in dissolving the union, without cultivating a State situate in such a central and commanding position.

"What, then, was the duty of the national government?

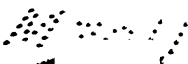


Illinois was certain to be a great State, with any boundaries which that government could give. Its great extent of territory, its unrivaled fertility of soil, and capacity for sustaining a dense population, together with its commanding position, would in course of time give the new State a very controlling influence with her sister States situate upon the western rivers, either in sustaining the federal union as it is, or in dissolving it, and establishing new governments. If left entirely upon the waters of these great rivers, it was plain that, in case of threatened disruption, the interest of the new State would be to join a southern and western confederacy. But if a large portion of it could be made dependent upon the commerce and navigation of the great northern lakes, connected as they are with the eastern States, a rival interest would be created, to check the wish for a western and southern confederacy."

It therefore became the duty of the national government, not only to make Illinois strong, but to raise an interest inclining and binding her to the eastern and northern portions of the Union. This could be done only through an interest in the lakes. At that time the commerce on the lakes was small, but its increase was confidently expected, and indeed it has exceeded all anticipations, and is yet only in its infancy. To accomplish this object effectually, it was not only necessary to give to Illinois the port of Chicago and a route for the canal, but a considerable coast on Lake Michigan, with a country back of it sufficiently extensive to contain a population capable of exercising a decided influence upon the councils of the State.

There would, therefore, be a large commerce of the north, western and central portions of the State afloat on the lakes, for it was then foreseen that the canal would be made, and this alone would be like turning one of the many mouths of the Mississippi into Lake Michigan at Chicago. A very large commerce of the center and south would be found, both upon the lakes and the rivers. Associations in business, in interest, and of friendship would be formed, both with the North and South. A State thus situated, having such a decided interest in the commerce, and in the preservation of the whole confederacy, can never consent to disunion; for the union cannot be dissolved without a division and disruption of the State itself.

If now we turn to Congress and seek to explain the action of that body we shall not have far to go. The trouble



growing out of the Michigan-Ohio boundary having for its basis practically the same conditions received its legal statement in the report of the judiciary committee March 1, 1836, which was practically as follows: "To the judgment of your committee nothing is more apparent than the correctness of the principle which Congress has thus twice in the most solemn manner decided. By the terms of the fifth article of the ordinance of 1787 the three States designated as the western, middle and eastern were to extend north to the territorial line, but there is an express reservation of authority to Congress to alter their boundaries so far as to form one or two States *in* that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. The Territory of Ohio was within the eastern State. Congress then had power to extend Ohio to the territorial or Canadian line; nay, the ordinance provided that it should be so extended, unless Congress should find it expedient to alter this provision. Illinois, Indiana and Ohio were all thus laid out by the ordinance as States to extend to the territorial line; but it was also provided that Congress might lay out one or two States *in* (not as the ordinance has sometimes been misquoted *out of*) that part of the Territory north of the east and west line referred to. A power to form one or two States *in* a Territory is not to be restricted without the grossest violence of all rules of construction to a mere power to form one or two States *out of* that Territory. The latter is a power only to divide the whole Territory into two States, or form one of it all; the former is a power to select any portion of that Territory for the purpose of forming one or two States and then of either assigning the whole so selected to one State or dividing it between two. The power here given to assign all the country north of the east and west line to the States primarily designated in the ordinance embraces the power to assign any part of it to them and it is evident that Congress has always so understood it. Thus we have here the interpretation which Congress seemed to place upon the fifth article of the ordinance of 1787, beyond which there was no practical appeal. Congress has the power to admit new States into the union. From the number of instances it is a well defined power that it has the right to define the limits and to prescribe the conditions of their admission. Congress adopted this as a rule of its action in regard to this question. As to the expediency of bringing up the question in a formal manner it

